

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Georgia

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

The State uses other factors described below to determine the seriousness of deficiencies in addition to those described at §488.404(b)(1):

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Georgia

CRITERIA FOR THE APPLICATION OF SPECIFIED REMEDIES FOR  
SKILLED NURSING AND INTERMEDIATE CARE FACILITIES  
(When and how each remedy is applied, the amounts of any fines,  
and the severity of the remedies)

See Attached Rules of Department of Medical Assistance, Chapter  
350-3. Attachment 4.35-A pages 1a through 1r.

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**RULES  
OF  
DEPARTMENT OF MEDICAL ASSISTANCE**

**CHAPTER 350-3  
SANCTIONS FOR NURSING FACILITIES**

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**350-3-.01 Definitions.**

(1) "Complaint Investigation" means a survey or visit to determine the validity of allegations of resident abuse, neglect or misappropriation of resident property, or of other noncompliance with applicable federal and state requirements.

(2) "Deficiency" means a failure of compliance with a Program Requirement. The fact that a deficiency no longer exists at the time of the Survey or complaint investigation which identifies it shall not negate its status as a deficiency for the purpose of imposing a civil monetary penalty or requesting a Plan of Correction.

(3) "Finding" means a determination, as the result of a survey or complaint investigation of the facility, that noncompliance with a Program Requirement could or should have been prevented or has not yet been identified by the facility, is not being corrected by proper action by the facility, or cannot be justified by special circumstances unique to the facility or the resident.

(4) "Initial finding" means the first time that a deficiency or deficiencies is recorded by a surveyor as the result of a survey or complaint investigation. Initial findings may be records of deficiencies that occurred prior to the date of the survey visit even if the deficiencies no longer exist at the time of the current survey.

(5) "Monitor" means a person or organization placed in a facility by the Department or the State Survey Agency for the purpose of overseeing a facility's correction of deficiencies or to ensure orderly closure of a

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facility. A monitor shall have practical long-term care experience related to the aspect(s) for which the facility is being monitored.

(6) "Nursing Facility" means an institution (or a distinct part of an institution) which

(a) is primarily engaged in providing to residents

1. skilled nursing care and related services for residents who require medical or nursing care,

2. rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

3. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and

(b) is not primarily for the care and treatment of mental diseases; and

(c) is enrolled as a provider in the Georgia Medical Assistance program.

(7) "Program Requirement" means any requirement contained in Subsection 1919(b), (c), or (d) of the Social Security Act of 1935, as amended, including but not limited to the provisions implemented by the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.

(8) "Repeat deficiency" is a deficiency related to resident care which recurs within eighteen (18) months of its citing in an Initial Finding, and which is found at a follow-up visit, complaint investigation, subsequent survey, or otherwise.

(9) "Repeated noncompliance" means a finding of substandard quality of care on three (3) consecutive annual surveys.

(10) "Resurvey" means a follow-up visit to determine whether the deficiencies found in a survey or complaint investigation have been corrected.

(11) "Scope" means the frequency, incidence, or extent of the occurrence of a deficiency in a facility.

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(12) "Severity" is the seriousness of a deficiency, which means the degree of actual or potential negative impact on a resident (as measured by negative outcomes or rights violations) or the degree to which his/her highest practicable physical, mental, or psychosocial well-being has been compromised.

(13) "State Survey Agency" means the Georgia Department of Human Resources.

(14) "Subsequent finding" means a violation or deficiency found on a resurvey. The deficiency must exist at the time of the resurvey or revisit. If a deficiency cited in an Initial Finding is found upon resurvey or revisit, a rebuttable presumption arises that the deficiency continued throughout the period of time between the initial survey or visit and the resurvey or revisit.

(15) "Substandard quality of care" means a finding by the Department or the State Survey Agency of one or more deficiencies, the existence of which limit(s) the facility's ability to deliver adequate care or services.

(16) "Survey" means a review of a case-mix stratified sample of nursing facility residents to determine the quality of care furnished as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities, and social participation, and sanitation, infection control, and physical environment. Such survey shall include an exit interview in which the surveyor and the facility shall attempt to resolve any conflicts regarding findings by the surveyor(s).

(17) "Surveyor" means a professional authorized by the State Survey Agency to conduct surveys or complaint investigations to determine compliance with Program Requirements.

(18) "Termination of the facility's participation" means exclusion of a facility from participation as a provider under the Georgia State Plan for Medical Assistance as a result of one or more deficiencies.

Authority Ga. L. 1977, p. 384, et seq., 394; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Definitions" was filed on April 11, 1978; effective May 1, 1978. **Amended:** Filed January 8, 1981; effective January 28, 1981. **Repealed:** ER. 350-3-0.3-.01 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

**350-3.02 Remedies.** If the Department finds that a facility does not or did not meet a Program Requirement governing nursing facilities,

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it may impose the following remedies, independently or in conjunction with others, subject to the provisions of this Chapter for notice and appeal.

(a) Termination of the facility's participation.

(b) Denial of Medicaid payments for services rendered by the facility to any recipient admitted to the facility after notice to the facility. This remedy shall remain in effect until the Department determines that the facility has achieved substantial compliance with all Program Requirements, or until another remedy is substituted for it. A facility subject to this remedy may request termination of the remedy on the ground that it has achieved substantial compliance with program requirements. The Department shall respond to the request by terminating the remedy, requesting additional information if documentation of substantial compliance is considered insufficient, or conducting a resurvey within twenty (20) days of receipt of the request. This remedy shall not be imposed with respect to temporarily hospitalized recipients previously residing in a facility placed on such notice who return to the facility after the date of notice, or with respect to residents who become Medicaid eligible after the date of notice and who resided in the facility prior to the date of notice.

(c) Civil monetary penalties, as specified in Section .04. When penalties are imposed on a facility, such penalties shall be assessed and collected for each day in which the facility is or was out of compliance with a Program Requirement. Interest on each penalty shall be assessed and paid as specified in Section .04. For individuals, such penalties shall be assessed for each infraction, as described in Section .04(g).

(d) Temporary management as specified in Section .05, to oversee operation of the facility and to assure the health and safety of the facility's residents while there is an orderly closure of facility or while improvements are made in order to bring the facility into compliance with all Program Requirements.

(e) Closure of the facility and/or transfer of recipients to another facility, in the case of an emergency as described in Section .03(e).

(f) Plan of Correction, to be drafted by the facility and submitted within a specified time to the Department. Each proposed Plan shall delineate the time and manner in which each deficiency is to be corrected. The Department shall review the proposed Plan and accept or

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reject the Plan by notice to the facility.

(g) Ban on admission of persons with certain diagnoses or requiring specialized care who are covered by or eligible for Medicare or Medicaid. Such bans may be imposed for all such prospective residents, and shall prevent the facility from admitting the kinds of residents it has shown an inability to care for adequately as documented by deficiencies.

(h) Ban on all Medicare and Medicaid admissions to the facility or to any part thereof. Such bans shall remain in effect until the Department determines that the facility has achieved substantial compliance with all Program Requirements, or until another remedy is substituted for it. A facility may request termination of this remedy in the manner described in (b) above. This remedy shall not be imposed with respect to temporarily hospitalized residents previously residing in a facility placed on such notice who return to the facility after the date of notice, or with respect to residents who become Medicaid eligible and who resided in the facility prior to the date of notice.

Authority Ga. L. 1977, pp. 384, 387; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule, entitled "Policy of Non-Discrimination," was filed on April 11, 1978; effective May 1, 1978. **Repealed:** ER 350-3-0.3-.02 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Remedies" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

**350-3-.03 Imposition of Remedies.** In determining which remedy to impose, the Department shall consider the facility's compliance history, change of ownership, and the number, scope, and severity of the deficiencies. Subject to these considerations, the Department shall impose those remedies described in Section .02 most likely to achieve correction of the deficiencies.

(a) Immediate jeopardy. If the Department finds that the facility's deficiency or deficiencies immediately jeopardize(s) the health or safety of its residents, the Department shall:

1. appoint temporary management and impose one or more of the remaining remedies specified in Section .02; or

2. terminate the facility's Medicaid participation and, at its option, impose one or more of the remaining remedies specified in Section .02.

(b) Absence of immediate jeopardy. If the Department finds that the facility's deficiency or deficiencies do not immediately jeopardize resident health or safety, the Department may impose one or more of the

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remedies specified in Section .02.

(c) Repeated noncompliance. If the Department makes a determination of repeated noncompliance with respect to a facility, it shall deny payment for services to any individual admitted to the facility after notice to the facility. Additionally, the Department shall monitor the facility on-site on a regular, as-needed basis, (as provided in Section .06), until the facility has demonstrated to the Department's satisfaction that it is in compliance with all Program Requirements governing facilities and that it will remain in compliance.

(d) Delayed compliance. If a facility has not complied with any Program Requirement within three (3) months of the date the facility is found to have been out of compliance with such Requirement, the Department shall impose the remedy of denial of payments for services to all individuals admitted after notice to the facility.

-(e) Emergencies. When the Department has determined that residents are subject to an imminent and substantial danger, it may order either closure of the facility or transfer of the recipients to another facility. The Department shall give notice of any such proposed remedy to the facility, the residents who will be affected or their representatives, the affected residents' next-of-kin or guardians, and all attending physicians. When either of these remedies is imposed, no Administrative Review shall be available and the provisions of Subsection .09(2) shall apply.

(f) Conflict of remedies. In the case of facilities participating in both Medicare and Medicaid which have been surveyed by both the State Survey Agency and the Health Care Financing Administration, or whose certification documents have been reviewed by both, and for whom the State Survey Agency and the Health Care Financing Administration disagree on the decision to impose a remedy or the choice of a remedy, the decision of the Health Care Financing Administration with regard to Medicare shall apply.

Authority Ga. L. 1977, pp. 384, 394; O.C.G.A. Sec. 49-4-142(a). **Administrative History.** Original Rule entitled "Incorporation of Existing Rules and Regulations" was filed on April 11, 1978; effective May 1, 1978. **Repealed:** ER. 350-3-0.3-.03 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Imposition of Remedies" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

**350-3-.04 Civil Monetary Penalties.** Civil monetary penalties shall be based upon one or more findings of noncompliance; actual harm to a resident or residents need not be shown. Nothing shall prevent the



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Department from imposing this remedy for deficiencies which existed prior to the survey or complaint investigation through which they are identified. A single act, omission, or incident shall not give rise to imposition of multiple penalties, even though such act, omission, or incident may violate more than one Program Requirement. In such cases, the single highest class of deficiency shall be the basis for penalty. Compliance by the facility at a later date shall not result in the reduction of the penalty amount. Civil monetary penalties and any attorneys' fees or other costs associated with contesting such penalties are not reimbursable Medicaid expenses except in the case where a facility prevails, in which case reasonable attorneys' fees and costs shall be allowable. Whenever such penalties are collected, the Department shall conduct a financial field audit to ensure that there has been, and will be, no Medicaid reimbursement associated with the penalties.

(a) Classification of deficiencies. The three classes of deficiencies upon which civil monetary penalties shall be based are as follows:

1. Class A: A deficiency or combination of deficiencies which places one or more residents at substantial risk of serious physical or mental harm.
2. Class B: A deficiency or combination of deficiencies, other than Class A deficiencies, which has a direct adverse affect on the health, safety, welfare, or rights of residents; or a failure to post notices issued by the Department of imposition of remedies;
3. Class C: A deficiency or combination of deficiencies, other than Class A or B deficiencies, which indirectly or over a period of more than thirty (30) days is likely to have an adverse affect on the health, safety, welfare, or rights of residents.

(b) Amounts. When Civil Monetary Penalties are imposed, such penalties shall be assessed for each day the facility is or was out of compliance. The amounts below shall be multiplied by the total number of beds certified for participation in the Medicare and Medicaid programs according to the records of the State Survey Agency at the time of the survey. Penalties shall be imposed for each class of deficiencies identified in a survey or complaint investigation.

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<u>Class</u>	<u>Initial Finding</u>	<u>Subsequent Finding</u>	<u>Repeat Deficiency</u>
A	\$ 10.00	\$ 15.00	\$ 20.00
B	5.00	7.50	10.00
C	1.00	1.50	3.00

In any ninety (90) day period, the penalty amounts may not exceed the applicable ceiling as described immediately below. The ceiling (Initial, Subsequent, or Repeat) shall be determined by which category has the largest percentage of the deficiencies cited in the survey or complaint investigation.

<u>Bed Size</u>	<u>Initial Finding</u>	<u>Subsequent Finding</u>	<u>Repeat Deficiency</u>
0 - 50	\$ 4,000	\$ 6,000	\$ 8,000
51 - 100	6,000	9,000	12,000
101 - 150	8,000	12,000	16,000
151 or more	10,000	15,000	20,000

(c) Procedure for imposing civil monetary penalties. Civil monetary penalties shall be imposed as follows:

1. Within ten (10) business days of its discovery of a deficiency, the State Survey Agency shall deliver to the Department its recommendation for assessment of a penalty as a result of such deficiency.
2. The decision to assess the penalty shall be made by a person in the Department who is not the surveyor(s) or complaint investigator(s) who reported the deficiency.

(d) Notice. The Department shall give written notice to the facility of its imposition of any such penalty within ten (10) business days of its receipt of a recommendation by the State Survey Agency for the assessment of a penalty. The notice shall inform the facility of the amount of the penalty, the basis for its assessment, and the facility's appeal rights.

(e) Payment. Within fifteen (15) business days from the date the notice is received by the facility, the facility shall pay the full amount of